IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 591 of 2004
In
SPECIAL CIVIL APPLICATION No. 11225 of 2003

with
CIVIL APPLICATION No.884 of 2004
in
SPECIAL CIVIL APPLICATION No. 11225 of 2003

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5		Whether it is to be circulated to the labour judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
CHAUDHARY POPATBHAI REVABHAI - Defendant(s)

Appearance :

MR ASHISH M DAGLI for Petitioner No(s).: 1.

MR AMIT C NANAVATI for Respondent No(s).: 1.

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CORAM :HONOURABLE MR.JUSTICE R.S.GARG
HON'BLE MR.JUSTICE RAVI R.TRIPATHI
Date : 11/07/2005

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE R.S.GARG)

1.Heard learned counsel for the parties. Short facts for disposal of the present appeal in nutshell are that the respondent-Chaudhary Popatbhai Revabhai (workman) was working as driver with the appellant-Gujarat State Road Transport Corporation (hereinafter referred to as “the Corporation”). On 3rd June 1994 when the workman was on duty as driver and plying the vehicle between Vadnagar and Mehsana an accident took place, the respondent was arrested and was ultimately prosecuted. The Department/ establishment also initiated departmental proceedings. Before the Criminal Court decided the matter finally the workman was found guilty in the departmental inquiry and was awarded punishment of withholding of one increment. The said order had attained finality. The prosecution launched at the instance of the Police continued and culminated into conviction of said driver. The order was maintained upto High Court. It is not the say of the workman that the order passed by the High Court has been taken to the Apex Court or the said order has been set aside, modified or nullified by any higher court. After receiving the information about conviction of the respondent, the appellant-establishment taking advantage of Rule 81 of the Service Regulations (hereinafter referred to as “the Regulations”) governing

the service conditions of the workman terminated his services. Being aggrieved by the said termination the respondent-workman took up the matter to the Labour Court, Kalol in Reference (LCK) No.92 of 1999. After hearing both the sides the Labour Court vide its award dated 12.11.2002 set aside the order of termination and allowed reinstatement of the workman with continuity of service without backwages for the intervening period. Being aggrieved by the outcome of the award the Corporation came to this Court in Special Civil Application NO.11225 of 2003. The learned Single Judge having dismissed the Special Civil Application by his judgement dated 25.11.2003, the Corporation is before this Court under section 15 of the Letters Patent.

2.At the very inception learned counsel for the respondent raised a preliminary objection that as the learned Single Judge refused to interfere in the matter under Article 227 of the Constitution of India the appeal at the instance of the present appellant is not maintainable. After giving our anxious consideration to the argument and on going through the records we find that the appellant before us never approached the learned Single Judge or this Court under Article 227 of the Constitution of India. The cause title of the writ application would show that the same was filed under Article 226 of the Constitution of India. Assuming that label does not decide the fate of the parties then too the learned Single was required to look into the facts of the matter especially the arguments of the present appellant that the learned Labour Court had no jurisdiction under the law to maintain the reference or make an award in case Regulation 81 of the Regulations was observed by the appellant-Corporation. From the records it would clearly appear that the appellant-Corporation has exercised its power under Regulation 81 of the Regulations and they were submitting before the Labour Court that the Labour Court would have no jurisdiction in the matter and the Labour Court despite such argument has observed that the present was a case of retrenchment. Taking into consideration the totality of the circumstances, the nature of the dispute and the scope of the arguments we are of the opinion that the present was a matter under Article 226 of the Constitution of India and the learned Single Judge even otherwise failed to exercise his jurisdiction under Article 226 of the Constitution of India, underestimating his own jurisdiction by simply observing that the present was a matter under Article 227 of the Constitution. In view of the discussion aforesaid we hold that the appeal is maintainable.

3.Learned counsel for the appellant submitted that the present was a case where the respondent workman was not subjected to double jeopardy, but was a case where in exercise of the powers conferred under Regulation 81 of the Regulations the establishment/ appellant has terminated the services of the workman. His submission is that the learned Single Judge misapplied the definition of 'retrenchment' as given under section 2(oo) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act”) and further erred in misinterpreting Regulation 81 of the Regulations. His further submission is that once an employee of the Corporation is convicted, then his services will have to be terminated.

4.On the other hand learned counsel for the respondent taking us through the definition of the word, 'retrenchment' submitted that each and every termination would amount to retrenchment and in the present matter the workman has been subjected to retrenchment. His further submission is that Regulation 81 of the Regulations gives discretion to the authority and in a given case the authority may or may not terminate the services of an employee. The last of his submissions was that the respondent workman has a good track record and has put in 15 years of unblemished service with the appellant-corporation, therefore, termination from services would be too harsh a punishment. He submits that the appeal deserves to be dismissed.

5.The learned Single Judge has referred to the definition of the word, 'retrenchment' as given in section 2(oo) of the Act. The definition reads as under:

1.The learned Single Judge has observed that termination by the employer for any reason except as shown in clauses (a), (b), (bb) or (c) would tantamount to retrenchment. In our considered opinion in ordinary circumstances the observation made by the learned Single Judge would be correct, but the opening words of section 2(oo) of the Act cannot be lost sight of. The opening words are

The words “otherwise than as a punishment inflicted by way of disciplinary action” would make it clear that clauses (a), (b), (bb) and (c) are general exceptions and any punishment inflicted by way of disciplinary action would be a special exception. While interpreting the law one should not lose sight of a fine distinction between general exception and special exception. The general exceptions are given in clauses (a), (b), (bb) and (c) and the special exception is termination as a punishment inflicted by way of disciplinary action. In the present matter the employer says that once an employee is convicted and the

conviction has attained finality then such person is to be removed/ terminated from the services and such removal/ termination would be result of a disciplinary action because no convicted person can be continued in services. In the present matter we will have to look into the intent behind Regulation 81 of the Regulations, to find out whether termination is by way of a punishment as a result of the disciplinary action. If we hold that Regulation 81 of the Regulations relates to a disciplinary action and termination is by way of a punishment then the definition as provided under section 2(oo) of the Act would certainly tilt the balance in favour of the employer/ appellant.

1.Regulation 81 of the Regulations reads as under:

1.The present is not a case relating to declaration of an incumbent as insolvent, therefore we are not addressing our attention to that part of the Regulation. Regulation 81 of the Regulations says that if an employee has been convicted in a criminal court then he shall be liable to be terminated without notice by the appointing authority. For application of Regulation 81 of the Regulations the establishment has to prove that there is a relationship of employer and employee, a particular employee has been convicted by criminal court, the conviction has attained finality and the convict/ employee is liable to be proceeded against. In the present matter the relationship of employer and employee is not disputed, and conviction has attained finality-is undisputed. The matter has not been taken to any further court is an admitted situation and under the Regulations without notice by the appointing authority such a convict can be terminated. The relationship of employer and employee is to be snapped on happening of an event. In the present case happening of event would be conviction of the employee which has attained finality.

2.So far as the observations made by the learned Single Judge and the argument of the learned counsel for the respondent are concerned; that Regulation 81 of the Regulations in fact gives wide discretion to the employer is concerned, is now being taken up for consideration. The learned Single Judge has observed that the language suggests “services shall be liable to be terminated” and not “shall be terminated”. The learned Single Judge has observed that the word “liable” gives and confers discretionary powers on the Corporation to terminate or not to terminate the services of an employee. With due respect to the learned Single Judge in our considered opinion the interpretation put forth by the learned Single Judge is contrary to law. The words, “shall be liable to be terminated” would mean that a decision has been taken

while the words, “shall be terminated” would mean an action to be taken. In view of the language used in Regulation 81 of the Regulations the words are to be read in their true perspective. The moment a final conviction is reported to the establishment then, they have to take an action and the services shall be terminated. The law of interpretation clearly says that the intention of the Legislature or makers of the rule should be gathered from the language employed in the legislation or the rule. In the present matter the intention of the makers of the Regulation was that once a man is convicted by a competent criminal court or he has been declared insolvent by a competent court, his services shall be terminated. The services “shall be liable to be terminated” or “shall be terminated” would not make much difference because the moment an employee is convicted then under the Service Regulations or Service Conditions a convict cannot be continued in service. In the present matter the moment conviction of the respondent attained finality then there was no scope even for the establishment/ appellant to show any clemency in favour of the employee by not terminating his services. We are unable to uphold the view of the learned Single Judge.

3. So far as the question relating to unblemished career of the respondent and 15 years of service rendered by him are concerned we can only say that for a wrong if a capital punishment can be awarded and if is rightly awarded then there would be no scope for any interference. The appellant/ establishment was certainly justified in taking action under Regulation 81 of the Regulations because they had every foundation and requirement available to them.

4. It was faintly argued by the learned counsel for the respondent/ workman that the present is a case where this Court should interfere under section 11-A of the Act.

5. Section 11-A of the Act relates to powers of the Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. In a given case the Labour Court can interfere in the matter where they find that the punishment inflicted upon or awarded to the workman is shockingly disproportionate. In a given case, if there is some scope for the Labour Court or High Court to interfere in a given matter, then the courts certainly can interfere, but interference on the question of punishment can only be made, if between the two limits punishment can be imposed or inflicted upon. There must be something minimum or something maximum. In a given case where one single punishment is provided for a lapse, wrong or misconduct, then no court would have any jurisdiction to interfere on the question of punishment. If in

such a case the Court tends to interfere on the question of punishment then the said Court virtually would be re-writing the Regulation by interpreting that the word, “termination” should be read as 'may be terminated' or 'is likely to be terminated'. That not being the intention of law no relief under section 11-A of the Act also can be given to the respondent workman. The order passed by the learned Single Judge is set aside and the award made by the learned Labour Court is quashed. The Appeal is allowed. The reference is answered in negative.

6.Consequently Civil Application No.591 of 2004 is finally disposed of.

(**R.S. GARG, J.)**

(RAVI R. TRIPATHI, J.)

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